(2)

समक्ष :- मध्य-प्रदेश उच्च न्यायालय जबलपुर

Division Bench (Criminal)

दाण्डिक अपील क्रमांक- 365 /2000

अपीलार्थी :-

अभियुक्त (जेल से)

बादी उर्फ धुरू उम्र 37 वर्ष, पिता- बुटू जाति गोंडा, पता साकिन - मर्दापाल थाना मर्दापाल जिला- बस्तर (म0 प्र0)

वि रु द्ध

प्रत्यार्थी :-

मध्य -प्रदेश शासन

दाण्डिक अपील धारा-374(2) भारतीय दण्ड संहिता 1973 के अंतर्गत

(16)

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आदेश पत्रक

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench:

Hon'ble Shri L.C.Bhadoo &
Hon'ble Shri V.K. Shrivastava, JJ.

11-10-2006

Shri Praveen Das, counsel for the appellant.

Shri U.N.S. Deo, Addl. Public Prosecutor for the State.

Oral judgment dictated on *Dais*.

PER L.C. BHADOO, J.

This appeal is directed against the judgment of conviction and order of sentence dated 07-12-1999 passed by the 3rd Additional Sessions Judge, Bastar at Jagdalpur, in Sessions Trial No.187/1999 whereby learned 3rd Additional Sessions Judge after holding the accused/appellant guilty for commission of murder of Sakru, under Section 302 of the Indian Penal Code, convicted and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo Rigorous Imprisonment for one year.

The case of the prosecution, in brief, was that on 13-2-1999 at about 12.00 noon when deceased Sakru was at his residence accused Batee @ Gudao attacked the deceased with knife on his neck and

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

after cutting the neck, he took out the trachea, as a result of which Sakru died spontaneously. The act of the accused was witnessed by daughter-in-law of the deceased namely Rasna Bai (PW-7). Baghchand (PW-1), son of the deceased, reported the matter to Police Station Maradpal, upon which the Station House Officer, Maradpal registered the First Information Report (Ex-P/1). Baghchand (PW-1) also gave merg intimation (Ex-P/2).

The Investigating Officer prepared the site plan (Ex-P/3). He took into possession of the blood stained soil and plain soil from the place of occurrence under Ex-P/4 and after giving notices to the Panchas, prepared the inquest report (Ex-P/5) of body of Sakru. The body of Sakru was sent for postmortem examination to Primary Health Centre, Kondagaon vide Ex-P/6, where Dr. R.K. Singh (PW-6) conducted the postmortem, prepared the report (Ex-P/7A) and opined that the cause of death was arrest of respiratory system on account of cutting of trachea with a sharp object. During the Police custody, the accused gave memorandum (Ex-P/9) regarding the place where he had concealed the knife and in pursuance of that he got recovered the knife vide Ex-P/8.

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After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Kondagaon, who in turn committed the case to the Sessions Judge, Jagdalpur, from where learned 3rd Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined nine witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he admitted that the evidence given by the witnesses was correct, he stated that he is innocent and has been falsely implicated in the crime. He also stated that he became mad at the time of commission of the crime.

On conclusion of the trial, learned 3rd Additional Sessions Judge, convicted and sentenced accused/appellant as mentioned in para 1 of this judgment.

We have heard learned counsel for the parties.

Shri Das, learned counsel for the accused/appellant, has not disputed the homicidal death of Sakru. Apart from that, from the evidence of Rasna Bai (PW-7), daughter-in-law of the deceased, who

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witnessed the crime and also the evidence of Dr. R.K. Singh (PW-6), who has stated that he conducted the postmortem on the body of Sakru, found that the trachea was cut, there were injuries on the neck. Cause of death was arrest of respiratory system on account of cutting of trachea with a sharp object, injury on the neck and death was homicidal in nature. Postmortem report is Ex-P/7A. Therefore, it is established that the death of Sakru was homicidal in nature.

As far as involvement of the accused/appellant in the crime in question is concerned, Rasna Bai (PW-7) has stated that on the fateful day her father-in-law (Sakru) was lying in the house and she was also present in the house. The accused came and attacked the deceased on his neck with a knife. She saw that the accused was cutting the neck of her father-in-law with knife, on which she raised the scream, hearing her scream, her another father-in-law and Komsingh came on the scene. They also saw the accused attacking the deceased.

Komsingh Thakur (PW-8) has corroborated the evidence of Rasna Bai (PW-7) and stated that on hearing the scream he learned to the house of the deceased and saw that the accused was running away carrying trachea of the deceased in one hand and knife on the other

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hand. He has further stated that Kaushalya and Neelchand have tried to chase the accused as he was carrying knife in his hand. Neelchand (PW-2), Harishchandra (PW-3) and Smt. Kaushalya (PW-4) have also corroborated the above evidence. Apart from that, the accused while in police custody gave memorandum about the weapon of offence and the police got recovered the same. Even in the statement recorded under Section 313 of the Cr.P.C., the accused has stated that Rasna Bai (PW-7) has correctly stated that he cut the neck of deceased. There is nothing in the cross-examination that these witnesses to suggest that the accused has been falsely implicated in the crime.

Learned counsel for the accused/appellant placing reliance on the judgment of Supreme Court in the matter of **DURGA DOMAR VS. STATE OF M.P. {2004 SCC (Cri.) 462}** argued that from the material placed on the record the prosecution has not been able to establish the motive and accused has committed the crime for any rhyme or reason. This act can only be of a mad person and the accused has stated in the last line of his statement recorded under Section 313 of the Cr.P.C. that at the time of commission of crime he was mad, therefore, it may be ordered that the accused be medically

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examined in order to ascertain as to whether he was suffering from the insanity at the time of commission of the crime.

It is true that the prosecution has not come forward with any motive of accused for commission of the crime, but simply because the prosecution has not been able to establish the motive it cannot be held that the accused was suffering from insanity at the time of commission of the crime. Except that, the accused stated that he became mad, there is nothing on record to show that the accused was suffering from insanity, therefore, it cannot be inferred that at any time the accused was suffering from insanity.

As far as the judgment of the Supreme Court in the matter of **DURGA DOMAR** (supra), relied upon by learned counsel for the accused/ appellant is concerned, the same is distinguishable on facts and in that case the accused committed the murder of 5 persons and all of them were children and that was in a very ferocious manner and he was therefore punished with extreme penalty of death. When the matter came up before the Supreme Court, the Court observed that there was no motive for the massacre and the mental condition of the appellant was not considered whether he was afflicted by schizophrenic paranoia or any other mental illness, the Court ordered

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for medical examination in order to ascertain the mental disposition of the accused, but in this case the accused has only committed murder of Sakru and there is nothing on record, which shows that the accused, at the time of commission of the crime, was suffering from insanity. Therefore, medical examination of the accused in order to ascertain his mental condition at the time of commission of crime cannot be ordered.

For the foregoing reasons, the appeal being devoid of merit, there is a legal clinching evidence of the involvement of the accused in commission of the crime, we do not find any ground to interfere with the finding of the trial Court.

In the result, the appeal fails and the same is accordingly dismissed.

Sd/-
V.K.Shrivastava
Judge

Sd/-
L.C.BHADOO
Judge

JUDGE

Gowri